

**ARIZONA SUPREME COURT
ADMINISTRATIVE OFFICE OF THE COURTS
INVESTIGATION SUMMARY and PROBABLE CAUSE ANALYSIS
and DETERMINATION REPORT**

<i>CERTIFICATE HOLDER/LICENSEE INFORMATION</i>	Certificate Holder:	Patricia Hall
	Certification Number:	20665
	Business Name:	Apache County Public Fiduciary
	Certification Number:	20115
	Type of Certificate/License:	PRN, BUE
<i>COMPLAINANT</i>	Name:	Carolyn Kershaw
<i>INVESTIGATION INFORMATION</i>	Complaint Number:	15-0009
	Investigator:	Pasquale Fontana
<hr/>		
Complaint Received:		May 15, 2015
Complaint Forwarded to the Certificate Holder:		May 18, 2015
Certificate Holder/Licensee Received Complaint:		May 26, 2015
Response From Certificate Holder:		June 4, 2015
Period of Active Certification/Licensure:		March 10, 2011 to Present (Patricia Hall)
Status of Certification/License:		Active
Period of Active Certification/Licensure:		March 18, 1999 to Present (Apache County Public Fiduciary)
Status of Certification/License:		Active
Availability of Certificate Holder/Licensee:		Available
Availability of Complainant:		Available
Report Date:		March 25 2016

ALLEGATIONS:

1. Complainant alleges the fiduciary wasted several thousand dollars of estate money because valuable estate items were sold at auction prices.
2. Complainant alleges the fiduciary forgot about the decedent's body for over two and one half months resulting an extra \$1,875.00 in fees to the mortuary.
3. Complainant alleges the fiduciary did not attempt to locate family members and complainant learned of her brother's passing approximately 14 months later.
4. Complainant alleges the fiduciary improperly handled the decedent's estate resulting in the loss of the home to foreclosure.
5. Complainant alleges the fiduciary enriched themselves by allowing friends or relatives to purchase an expensive bedframe at a very low price.

ADDITIONAL ALLEGATIONS:

None.

List of sources for obtaining information: (Investigative, records, outside resources, etc.):

- Written complaint and documentation submitted by complainant, Carolyn Kershaw (“Kershaw”)
- Written response and documentation submitted by certificate holder, Patricia Hall (“Hall”), Designated Principal, Apache County Public Fiduciary
- Review of applicable Certification and Licensing Division (“Division”) records
- Review of applicable sections of Arizona Revised Statutes (“ARS”), Arizona Codes of Judicial Administration (“ACJA”) § 7-201 and § 7-202, and Arizona Supreme Court Rules
- Review of applicable records, Arizona Superior Court, Apache County, regarding PB2012-075, involving the Estate of Clifford Lee Olson (“Mr. Olson”).
- Interview with Hall and attorney Joe Young
- Interview with Bonnie Stallings (Stallings”), Public Fiduciary’s Office
- Interview with Kershaw
- Interview with Kay Ramsey (“Mrs. Ramsey”)

PERSONS INTERVIEWED:

1. Patricia Hall
2. Bonnie Stallings
3. Carolyn Kershaw
4. Kay Ramsey

SUMMARY OF INVESTIGATION:

Complainant, sister of the decedent, accused Hall of squandering estate money by selling items at discount prices at auction and that Hall mishandled the decedent’s estate resulting in the foreclosure of real property. Complainant alleged Hall allowed relatives to purchase an expensive bedframe at very low price. Complainant also alleged Hall “forgot” about the decedent’s body in a mortuary for over two months resulting in extra fees charged by the mortuary; and that Hall did not make attempts to locate family members to inform them of Mr. Olson’s death.

Hall said estate assets were sold through the county’s public surplus auction and she denied squandering estate money. Hall said she contacted people that may have known of the decedent’s family and she published legal notices in various newspapers around the country. Hall stated that Mr. Olson’s remains were held in the mortuary while she was

actively trying to locate family members. Hall said the estate did not have money and her office was trying to sell the property before it went into foreclosure.

SUMMARY OF FACTUAL FINDINGS OF INVESTIGATION:
--

1. On November 8, 2012, Hall, Apache County Public Fiduciary, was appointed Personal Representative for Mr. Olson's estate; and on November 13, 2012, the Apache County Superior Court authorized the Public Fiduciary's office to administer the estate. Mr. Olson passed away on or about October 30, 2012.
2. On May 15, 2015, the Division received a written complaint from Kershaw. She alleged Hall squandered "several thousand dollars" because valuable estate assets "disappeared" while under Hall's care. Kershaw said she had difficulty getting "real" information about the estate. Apparently Hall had no memory of any estate art or of a camera that was in the inventory but when Kershaw received a list of auctioned items she noted items such as Native American art and other collectibles that were not appraised. Kershaw claimed that she was refused pictures of her brother's travel trailer and truck sold at auction and when she received the auction receipts for those items the buyer information was redacted prompting Kershaw to think Hall was protecting vital information about the buyers or of the value of the vehicles sold.

Kershaw stated that she wanted Hall and Stallings to be censured for "gross mishandling" of the estate and said it was obvious that the two intended to "enrich themselves, their employer, and/or their friends and relatives" by selling a queen bed and frame, box spring and mattress to a person named Garrett Stallings for \$15.00. Kershaw said Stallings neglected to send a photo of the bedframe but Mr. Olson's friends indicated that it was an expensive handmade pine log frame.

Kershaw alleged Hall "forgot about my brother's body" which was held at a mortuary for over two and one half months. She said the mortuary waived 35 days of fees at \$75.00 per day but the estate incurred an extra \$1,875.00 for Hall's "forgetfulness."

Kershaw further accused Hall of not making an effort to find family members although Kershaw acknowledged that Hall published notices in various newspapers. Kershaw said she learned of her brother's death on December 13, 2013, about 18 months after he passed away. She added that Hall began auctioning off Mr. Olson's belongings eight months after he died. Kershaw said Hall allowed Stallings to accompany her on trips "to the tune of \$1088 @\$75 per hour."

3. On June 24, 2015, Kershaw sent a follow up letter to the Division indicating that in her initial complaint she omitted to include one of the most significant losses, her brother's home in Springerville, Arizona due to what Kershaw asserted was Hall's "improper handling" of the estate. Kershaw said she learned of her brother's death

after her daughter found a Notice of Trustee Sale on the internet on December 13, 2013, and that up to a year after Mr. Olson's death the mortgage company was attempting to reconcile the matter. Kershaw said had the legal notice been published in the Jamestown, New York newspaper the estate would have been whole instead of the home being lost to foreclosure.

4. On June 4, 2015, Hall provided a written response to the Division. She said the mortuary contacted her on November 5, 2012, to inform that they had picked up Mr. Olson's remains from Bannon Springs (assisted living facility), on October 30, 2012. Hall said she spoke with Mr. Olson's friend, Mrs. Ramsey, who told her that she often helped him with administrative matters but she did not wish to be involved with his affairs. Mrs. Ramsey said Mr. Olsen had only been in Banner Springs for six days before he died. She did not have any knowledge of family members but had telephone numbers for people that may have known him. Hall said attempts to locate family were conducted over several months but those efforts were unsuccessful.

During the time Mr. Olson's remains were held at the mortuary, Hall said she contacted the White Mountain Independent in St. John's, Arizona and on November 27, 2012; December 4, 2012; and December 11, 2012, she had legal notices published. She said she contacted the Blaine County News Journal on February 4, 2013, regarding publishing a legal notice. Publishing notice in the Detroit newspaper would have cost \$745.60 for four consecutive weeks and Hall believed it was too expensive. As well, publishing the notice required a credit card for payment and one was not available. Hall said the Post Journal was contacted on February 12, 2013, and again on March 27, 2013. On February 6, 2013, publication was completed for four consecutive weeks in the Journal News-Opinion in Chinook, Montana.

Hall said that Kershaw contacted the Public Fiduciary's office on December 16, 2013, informing she was Mr. Olson's "estranged" sister, and since that date she had been in regular contact with the office. Hall said on March 19, 2014, Kershaw was sent lists of Mr. Olson's inventoried items adding that the auctions were only conducted during the time before Kershaw had acquired representation. Hall said her office consulted with the attorney several times regarding the inventory and Kershaw's demands. A disc with inventory items to be sold at the surplus auction was sent to Kershaw. Hall said Mr. Olson's truck and trailer were sold for a fair price within the auction and the only Native American art consisted of "a few sand paintings."

Hall denied that any estate money was squandered and she called Kershaw's assertions unjust and construed. Hall said neither she nor Stallings has control over the public surplus auction. Surplus auction dates are published within the local newspaper alerting the public of the dates when people can bid on auction property. Hall said the Public Fiduciary's office does not bid on items nor do they monitor the bidding procedure. She opined that Kershaw was under the impression that

auction items should be sold for additional values but Hall said values begin with each bidder placing a price within the auction site and the bidding process continues until the last date of the sale.

Regarding Kershaw saying Mr. Olson's friends had knowledge of his personal items, Hall said Kershaw had not contacted her brother for over 20 years and Hall questioned her knowledge or of his friends because no one had contacted the Public Fiduciary's office regarding family members nor those who knew the deceased. Hall added that Mr. Olson was taken to Bannan Springs alone and he passed away there without mentioning his sister or friends that knew her.

5. At the Division's request, Hall submitted a statement regarding the foreclosing of Mr. Olson's home in Springerville, AZ, per Kershaw's additional correspondence to the Division, dated June 24, 2015. She said upon notification from Chase Bank that the property was going to foreclosure due to non-payment she contacted the California Re-conveyance Company to inform them of the situation and of her attempt to sell the property before foreclosure through a short sale. Hall said she then contacted a local realtor who complied with three showings and one bid of \$73,000.00 which was declined. After many telephone calls and only one offer the house went into foreclosure in September 2013.
6. On October 7, 2015, Division Investigator, Pasquale Fontana ("Investigator Fontana") conducted a telephonic interview with Hall and Stallings, and attorney for the Apache County Public Fiduciary, Joe Young. Asked to clarify her role Stallings identified herself as the "ad litem" and indicated that she is not a licensed fiduciary but assisted Hall.

Regarding the *Authorization to Administer Estate*, dated November 13, 2012, and signed by the presiding Judge, showing the estate was worth less than \$20,000.00 at the time of Mr. Olson's death, Hall said she did not provide the valuation of the estate to the court and added that the court had no idea as to what kind of assets Mr. Olson had so the court randomly assigned that value. Hall said she could not do an initial inventory until after her office was appointed Personal Representative for the estate and that her office filed an inventory in February 2013. Asked about the value of the estate at the time of her office filing the inventory, Hall said she did not know the value because the office practice was to complete an inventory but not assign values for the estate items, per the court's direction. Asked when she would establish a valuation for the estate assets, Hall said, in this case, her office had not heard from any member of Mr. Olson's family so she contacted a realtor to determine the value of the real property before it was listed for sale.

Regarding auctioning of estate items, Hall said the Public Fiduciary's office uses the county's online public surplus auction of which the county takes two percent of final sales. She said this system is utilized because her office does not have the personnel to conduct auctions. Asked who determines the price of the items listed for auction, Stallings said the Public Fiduciary's office does not set a "beginning

price” because it could eliminate participation in the auction and they want it to be open bidding. They do not know who bids on the items or the amount of the bid until the final sale. She said the fiduciary’s office set a reserve or “cap” prices for the estate truck and travel trailer. Regarding the sale of a bedframe, Stallings acknowledged that her son bid on and won the bedframe through the auction but maintained that this is a public auction and that anyone could bid on any listed item. Stallings described the bedframe as old, discolored, scratched, and cracked adding that it looked like “2x4” pieces put together. She said there was nothing indicating the frame was expensive. Stallings said the Native artwork was very common art, lacking any signature from the artist and was of insignificant value.

Hall said on November 15, 2012, the mortuary notified her that they had picked up Mr. Olson on October 30, 2012, and would hold his remains for a week before charging a daily fee of \$75.00. Hall said she filed a *Statement of Administration and Authorization to Administer an Estate* with the court. She said she mailed the mortuary the authorization for cremation on January 3, 2013, and that the mortuary charged the estate for 25 days of storage and waived 35 days from the bill. Hall said after the mortuary contacted her she immediately started to locate people that knew Mr. Olson and she sent out legal notices to various newspapers trying to find any family members. Hall said she spoke with a man that knew him for 20 years but this person mentioned only that Mr. Olson had two ex-wives but no names were known and he did not have knowledge of any family members. Hall said her office eventually received Mr. Olson’s birth certificate and discovered that he was born in Panama. She said she was also aware of two states in which Mr. Olson’s parents were born so she tried finding family in those states and posted legal notices. Hall claimed she did not want to spend \$700 to publish a notice in Detroit based on “hearsay” that a sister may have been there.

Regarding the foreclosure of the Springerville, AZ property, Hall said she knew Mr. Olson had a mortgage. She called Chase Bank about this and was told it was paid through March 2013. Hall said the estate did not have sufficient money and did not until her office starting auctioning off estate items but they still did not have enough to “catch up with the payments” and acknowledged that she did not attempt to make mortgage payments. Hall added that she did not have authorization to make up the difference in the house not knowing if it would sell. She said she contacted a realtor in April 2013, and listed the property on June 10, 2013. The house had two appraisals, one at \$77,000.00 and the other at \$80,000.00. Hall said there was only one offer to purchase for \$73,000.00 but it was a “HFC loan” and rejected by the lender. As a last resort, Hall said she wanted to do a short sale but the bank decided to put the property into foreclosure on September 26, 2013. The bank listed the property for \$59,000.00 but found it was difficult to sell at that price.

7. On October 22, 2015, Investigator Fontana conducted a follow up interview with Hall. She said after receiving a letter from Chase Bank, dated April 5, 2013, showing that the mortgage was past due, she contacted bank manager at that time, Cathy Penrod, and discussed selling the property. Hall said the bank told her that it

would take several months before a foreclosure happened so Hall was hopeful that the property would sell quickly. She verified that the estate had approximately \$5,000.00 in one account and that she elected not to put any money toward the mortgage payment because there were a number of other bills to cover and she did not yet fully know what additional bills the estate would have to cover. Hall said they started auctioning off estate items in order to cover costs such as utilities and other bills so she wanted to ensure that the estate had sufficient money to pay for those.

Hall said the property was listed for \$75,000.00 in June 2013, and despite several showings they had only one offer to buy for \$73,000.00 but it was a Fair Housing Act ("FHA") loan and the lender declined funding the loan although Hall was not given a reason why. After the offer was rejected Hall said she contacted the bank and the decision was made to short sell the property but that no other offers to purchase were made. Hall acknowledged that she did not consider putting any of the proceeds from the sale of the truck and travel trailer toward the mortgage payments because the plan was to sell the property.

8. On October 22, 2015, Investigator Fontana conducted a telephonic interview with Kershaw. She said she was estranged from her brother after the family had a "falling out" and he stopped contacting her in the late 1980s. Kershaw made a number of unsuccessful attempts to locate him using internet searches but eventually her daughter searched and learned of the property sale and of his death. Kershaw added that her brother must have been quite angry with the family because when she took over the estate she was unable to find any pictures of the family.

Regarding estate assets Kershaw said she thought Hall's office squandered money because the estate's Native sand paintings were sold at auction at discount prices and Kershaw grew suspicious because Hall did not have information or pictures of the sand paintings. Kershaw did not know whether the sand paintings had any commercial value but said that her brother loved art. Kershaw received one painting that did not sell at auction. Kershaw said her brother loved to dive for gold and coins at the site of sunken ships so she assumed he would have artifacts or coins but she could not verify whether there were any such items. She added that a nephew may have maintained some level of contact with Mr. Olson while he lived in Washington years ago and the nephew may have been seen coins. Kershaw said Hall learned the estate had a safety deposit box but apparently it contained only paperwork and Kershaw speculated as to whether there were any coins found.

Regarding Hall's attempts to contact family members, Kershaw said she got information from Hall's notes and emails. Kershaw said she knew Hall posted legal notices in their mother's home town in Montana and also published notices in Arizona. Kershaw said Hall contacted a newspaper in Jamestown, NY, but emails showed that the notice was not published because Hall's office did not pay for publication. Kershaw said she has cousins in Jamestown and opined that had the legal notice been posted there Kershaw would have been made aware of the

situation and said she would have stepped in to save the property from foreclosure.

With respect to estate bedroom furniture Kershaw said she was in contact with her brother's friend, Mrs. Ramsey, who had a power of attorney for a short time before he died. Mrs. Ramsey saw the bedroom furniture and described it as "beautiful" and a "very expensive" pine log frame. She did not estimate a value for the frame but Kershaw thought it could have been worth several hundred dollars and more than it sold for at auction. Kershaw added that her brother likely purchased this second hand.

9. On October 29, 2015, Investigator Fontana conducted a telephonic interview with Mrs. Ramsey. She said she knew Mr. Olson for four or five years and had a signed power of attorney so that she could pay his bills because he was moving into an assisted living facility. He died before the document was registered with the county. Mrs. Ramsey said Hall contacted her inquiring about Mr. Olson's family but he had only spoken in passing about his mother and grandmother and he never mentioned where they lived and he even wondered if they were still alive. Mrs. Ramsey said he told her he left home after high school and he did not want to talk about his family and wanted nothing to do with them.

Regarding the bedframe referenced in this complaint, Mrs. Ramsey said she saw it and recalled that it was a king size bed with a log or cabin style headboard. She did not know if Mr. Olson purchased it new or used but said there was nothing remarkable about the bedframe other than that it was "real nice looking." She said it was not something she would have expected Mr. Olson to buy because he was "frugal" and he frequented thrift stores. She was unable to offer any opinion on an estimated value of the item.

With respect to Native artwork Mrs. Ramsey said there was a senior center where local residents bought and sold items and said Mr. Olson may have owned two 11x14 sand paintings. She saw the art but said, "I can't tell you a thing about them" and she was unable to indicate whether they had any commercial value.

10. On November 3, 2015, Investigator Fontana conducted a follow up interview with Hall. She verified that her office did not take a pictorial record of the contents of Mr. Olson's safety depot box at the time of the initial inventory but noted the contents. She denied finding any artifacts or foreign coins in the safety deposit box or at Mr. Olson's home but said he had a large novelty plastic beer type bottle where he kept coins. They found "regular American coins" and also several Canadian pennies all of which she said were inventoried.

Investigator Fontana discussed Hall's previous statement made to the Division that per the court's direction her office was not required to provide a value of the estate along with the initial inventory. Hall clarified that there was no court order or direction from the court and said she may have been confused by the question asked. This investigator reviewed, with Hall, pertinent sections of Rule 31(A)(2),

Rules of Probate Procedure, requiring the fiduciary to “list all of the property owned by the decedent at the time of the decedent’s death as known by the personal representative on the date the inventory is prepared, and shall provide the values of such assets as of the date of the decedent’s death.” Hall did not appear to be familiar with the provisions of the referenced Rule.

ANALYSIS OF ALLEGATIONS:

Allegation 1: Complainant alleges the fiduciary wasted several thousand dollars of estate money because valuable estate items were sold at auction prices.

ACJA §§ 7-201(F)(1) and 7-202(F)(1) require all fiduciaries to comply with the Code of Conduct contained subsection (J, adopted pursuant to A.R. S. § 14-5651(A)(1).

§ 7-202(J)(1)(a) and (c)(2) states:

J. Code of Conduct.

1. Duty to the Court.

a. The fiduciary shall perform all duties and discharge all obligations in accordance with current Arizona law, federal law, administrative rules, court orders, court rules, administrative orders, and the Arizona Code of Judicial Administration.

c. The fiduciary shall:

(2) Provide or ensure that reports, notices, financial accounts, and other documents are timely, complete, accurate, understandable, in a form acceptable to the court, consistent with the requirements specified in Arizona law, court rule, and the applicable sections of the Arizona Code of Judicial Administration

§ 7-202(J)(6)(a), (b), (d), and (h) read:

6. Personal Representative.

a. On appointment, the fiduciary shall review and be informed of the statutory requirements for managing a decedent’s estate.

b. On appointment, the fiduciary shall take reasonable steps to marshal and secure the property and income of the decedent’s estate as soon as possible. The fiduciary shall provide stewardship of the property for safekeeping and, at a minimum, record pictorially and establish and maintain accurate records of all real and personal property.

d. A fiduciary shall exercise intelligence, prudence, and diligence in providing competent management of the property and income of the estate. A fiduciary acting as a personal representative shall observe the standards of care and duties applicable to trustees.

h. A fiduciary acting as personal representative shall prepare complete, accurate and understandable court documents, including, but not limited to, petitions for determination of heirs, inventories, accounts, and closing statements.

Arizona Court Rules of Probate Procedure, Rule 31(A)(2) states:

A. Inventories

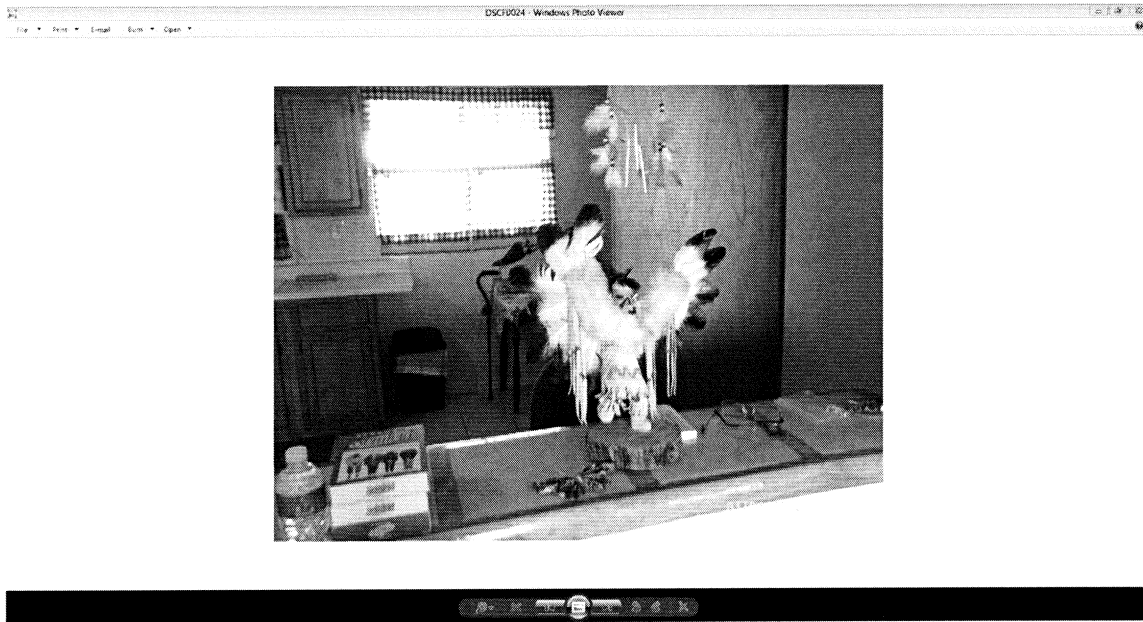
2. The inventory shall list all the property owned by the decedent at the time of the decedent's death as known by the personal representative on the date the inventory is prepared, and shall provide the values of such assets as of the date of the decedent's death.

Kershaw alleged Hall “squandered” or wasted estate money by allowing estate assets to be sold at discounted prices at a public auction. Kershaw took issue with the sale of estate Native American sand paintings although she did not know whether the sand paintings held any commercial value. She became suspicious because apparently Hall did not have pictures of the artwork. Kershaw had been estranged from her brother and last had contact with him in the late 1980s. She said he loved to dive at sunken ship sites in Belize so Kershaw speculated that her brother may have recovered artifacts or coins from those trips but she could not verify whether he possessed any.

After appointment as the Personal Presentative, Hall said estate assets were liquidated via the Apache County’s Public Surplus Auction but said her office was not directly involved with the auction nor was the office given the identify of those bidding or how much was offered until the final sale. Hall and Stallings said auction prices were determined by those administering the surplus auction sale and that the fiduciary’s office had no control over the process. Stallings remarked that the sand paintings were “common art,” lacked an artist’s signature, and had no significant commercial value. Hall did not dispute those statements.

The Division reviewed auction receipts showing that one Native American sand painting and a Kachina Doll sold collectively for \$46.10. The other three sand paintings sold as a group for \$34.25.

The following is a picture of the estate Kachina Doll, taken by Hall’s office for inventory purposes:

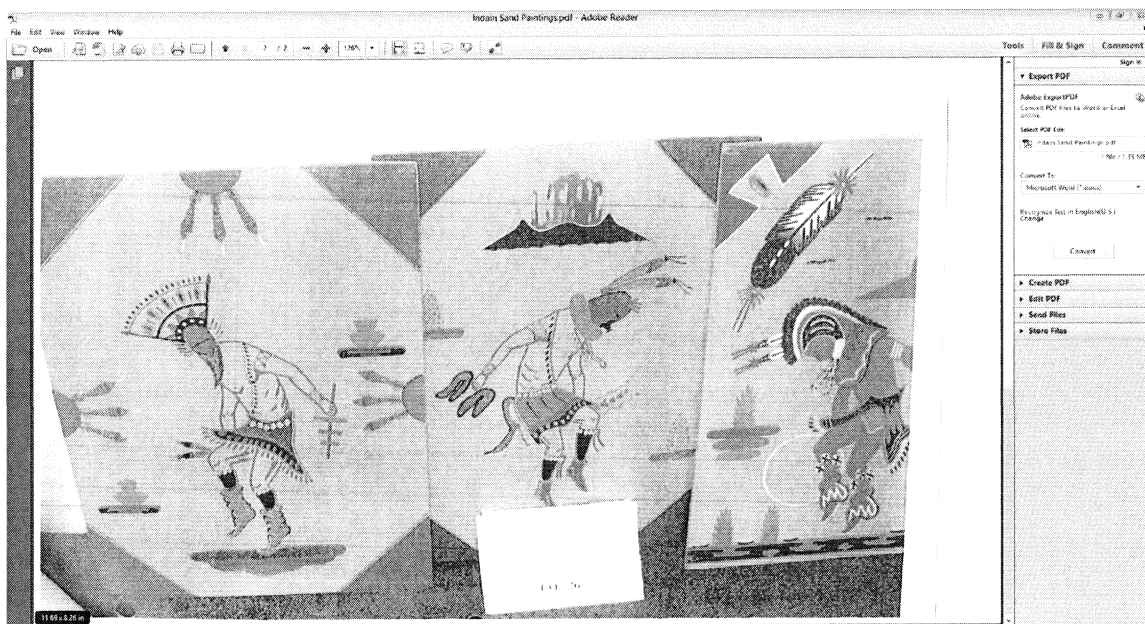
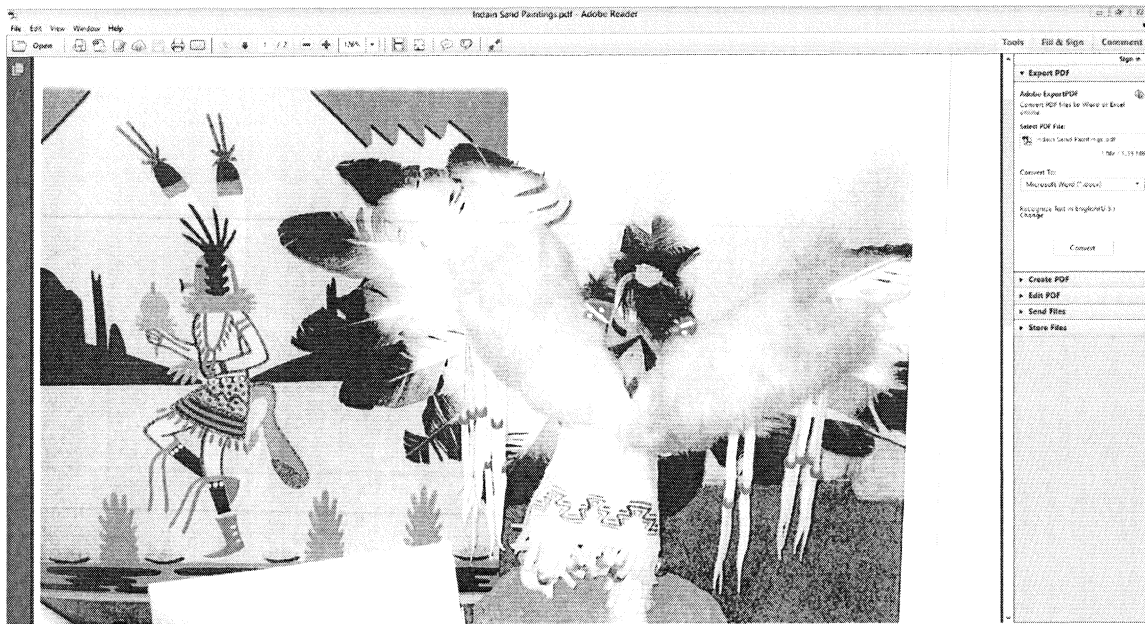


Per this image, the Kachina doll appears to be approximately twenty four (24) inches in height. The fiduciary's office did not have any information about the artist or whether this piece was signed.

Division staff conducted internet searches revealing that considerable information exists on Kachina dolls regarding history, variety and types, how they are made, how to determine authenticity, and on respective values for these dolls. Overall, Kachina dolls appear to vary significantly in appearance and features and contrast substantially in values. Because the estate Kachina doll, as noted in the image above, was sold at a public surplus auction in 2013 and in the absence of any history of the doll or valuation it is difficult to know whether this particular item was authentic and/or had any appreciable monetary value.

With respect to the Native sand paintings, Stallings described those as very common art, lacking any signature from the artist, and of insignificant value.

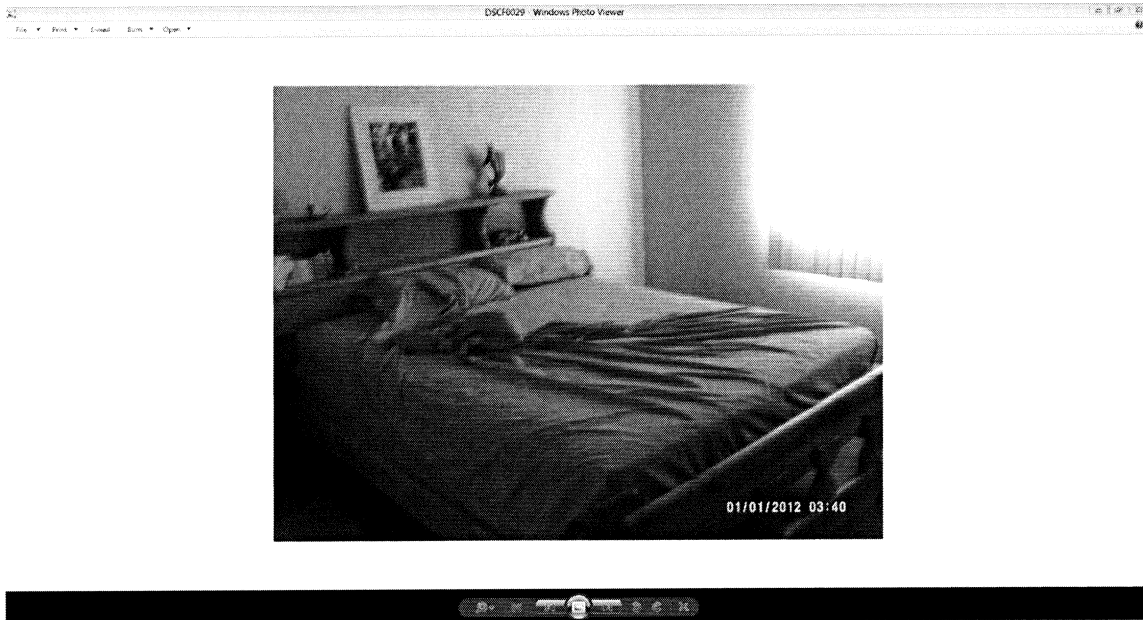
The following pictures were provided by Hall's office per the inventory of the estate.



Regarding the subject bedframe, in the interview with the Division, Stallings acknowledged that her son bid on and won the bedframe for \$15.00, but she maintained that the item was sold via a public surplus auction and that any person could bid on any items offered for sale. Stallings described the bedframe as old, discolored, scratched, and cracked, that it looked like “2 x 4” pieces put together and that there was nothing indicating the frame was expensive.

In her interview with the Division, Mrs. Ramsey recalled seeing the bedframe and said, while there was nothing remarkable she opined that it was not something Mr. Olson would have purchased because he was frugal and frequented thrift store although she was unable to offer any estimated value for the item.

The following is a picture of the bedframe provided by Hall's office.



Records filed with the court on February 4, 2013, showed that Hall's office completed inventories on estate properties on December 18, 2012, January 8, 2013, and January 10, 2013. The safety deposit box was inventoried on March 12, 2013. Hall's office did not make a pictorial record of the contents of the safety deposit box although she appeared to account for the contents, as listed in the inventory. Hall denied finding any artifacts or coins, outside of regular American currency, with the exception of several Canadian pennies, in the safety deposit box or from any other source related to Mr. Olson's estate.

As previously stated in this analysis, Hall's inventories listed the estate assets but failed to contain any valuation, in violation of Rule 31(A)(2) and § 7-202(J)(6)(a) and (h). The estate items listed on the inventory plus the pictorial records of some of the items appear to show regular household type of assets that likely would not hold substantial market value with the exception of parcels of land, real property and vehicles. The other noted exception may be the Kachina doll but, as stated earlier, no information was available on the art that would verify whether it was authentic, collectible, or held any significant value. Hall and her office did not appear to take any action to determine whether this item was rare, collectible, or valuable and the piece was simply listed for sale at the county's public surplus auction.

As to the auction, Hall, by admission, exercised no control or management of the auction process to assure that form of auction was an appropriate manner to dispose of the property. The Division's investigation determined that the Apache County Public Fiduciary's office made no attempt to value the property, took inadequate steps to assure the manner of disposal/sale was appropriate, and failed to pictorially record all of the property. Given these acts, the Division has been unable to determine if the Apache County Public Fiduciary explicitly "squandered" or wasted estate funds, as alleged by Kershaw. Conversely, as stated above, the Division did determine that proper procedures were not followed when marshalling and disposing of assets. Therefore, Allegation 1 is substantiated.

Allegation 2: Complainant alleges the fiduciary forgot about the decedent's body for over two and one half months resulting an extra \$1,875.00 in fees to the mortuary.

Records reviewed by the Division showed that the mortuary notified Hall's office on November 15, 2012, to inform that the mortuary picked up Mr. Olson's remains. Hall's office contacted the mortuary on November 26 and 27, 2012, and on December 4, 2012. On December 31, 2012, the mortuary sent Hall an invoice along with a Statement of Funeral Goods and Services Selected. On January 7, 2013, the mortuary faxed Hall a letter marked "Urgent" containing instructions for Hall to immediately sign the authorization and contract writing that it had been "over 2 months" and the mortuary needed to "get everything taken care of" so the cremation could be completed.

Kershaw alleged that Hall "forgot" about Mr. Olson's body resulting in the estate incurring additional expenses. A review of the Statement of Funeral Goods and Services Selected showed that the mortuary waived 35 days storage of Mr. Olson's remains but charged for 25 days.

The Division found no evidence that Hall "forgot," willfully neglected or otherwise ignored the circumstances at hand and records showed that she had contact with the mortuary. During the period of time when Mr. Olson's remains were held at the mortuary Hall was attempting to locate family members evidenced by publishing legal notices in different newspapers in various states. Therefore, Allegation 2 is not substantiated.

Allegation 3: Complainant alleges the fiduciary did not attempt to locate family members and complainant learned of her brother's passing approximately 14 months later.

Kershaw asserted that Hall did not attempt to locate family members but also acknowledged that Hall posted legal notices in newspapers over several states. Kershaw recognized that Hall contacted a newspaper in Jamestown, NY, to publish notice but it was not published because Hall's office did not make payment. Kershaw claimed that she has cousins in Jamestown and had that notice been published Kershaw would have learned of her brother's death and she claimed that she would have prevented his house from being foreclosed upon.

In her interview with the Division, Mrs. Ramsey stated that Hall contacted her to inquire about family members but there was little known about them because Mr. Olson did not talk about his family and according to Mrs. Ramsey, he apparently made statements to her that he wanted nothing to do with them after he completed high school.

Records reviewed by the Division showed that Hall published legal notices, running for four weeks, in specific areas of Arizona and Montana. She contacted a newspaper in Detroit, Michigan, but decided the \$749.60 to run the publication was cost prohibitive and that Michigan was speculative as to whether any family was actually there. The newspaper also required a credit card for payment and none was available so the notice was not published. Records also showed that Hall's office contacted the Post Journal in Jamestown, NY, regarding publication. An email from Hall to the newspaper, dated March 27, 2013, documented, in part, Hall's inquiry stating that she had requested that the notice be published in January 2013 but the fiduciary had not received any information, an affidavit for publication, or an invoice. Hall's accounting and billing showed that her office contacted the Post Journal in Jamestown on January 14, 2013, and faxed the legal notice. Billing also showed that on February 7, 2013, a call was placed to the Post Journal and Hall's office sent the legal notice via email. Billing showed that on April 1, 2013, and on April 4 2013, Hall's office contacted the Post Journal. The latter documented that the legal notice did not run because of lack of payment because Hall's office did not receive an invoice.

Hall appeared to make reasonable efforts to locate family members. The Division found no evidence that supported that allegation contained herein. Therefore, Allegation 3 is not substantiated.

Allegation 4: Complainant alleges the fiduciary improperly handled the decedent's estate resulting in the loss of the home to foreclosure.

After receiving a letter from Chase Bank, dated April 5, 2013, advising that the subject property's mortgage loan was in default, Hall said she contacted the local branch manager at that time, Cathy Penrod, and discussed selling the property. Hall said she was told that a foreclosure would not happen for several months so she was hopeful that the property would sell quickly and avoid foreclosure. Hall also contacted the California Re-conveyance Company. Hall said the home was appraised at \$80,000.00 and at \$77,000.00 and said the property was listed in June 2013, for \$75,000.00. An offer to purchase was submitted for \$73,000.00 but it was an FHA loan and the lender rejected the loan. There were no other offers on the home and it went into foreclosure on September 26, 2013.

Records reviewed by the Division showed that the estate did have some liquidity including \$5,002.12 in an account and \$10,361.70 and \$8,694.30 respectively from the sale of a truck

and travel trailer but Hall elected not to put any of those monies toward the mortgage and proceeded with the plan to sell the property.

Emails reviewed, dated July 22, 2013, from the realtor to Hall, documented that the listing had been on the market for 42 days, shown twice and one offer for \$73,000.00 was made on the 42nd day of listing. Hall's case notes, dated July 22, 2013, documented, in part, that the realtor called regarding an offer to purchase the home for \$73,000.00 but it was up to the FHA lender to approve. An email from the realtor to Hall, dated July 24, 2013, reflected discussion about a counter offer with the realtor stating the counter offer was to increase the purchase price to \$77,000.00 with the seller to pay a total of \$4,300.00 in closing costs to include the appraisal. Hall's case note entry, dated August 15, 2013, showed that the realtor called stating that the FHA Appraiser appraised the house at \$70,000.00 but lowering the price to that would not cover the lender's demands for closing costs and repairs.

A review of Zillow records showed the property was listed on June 26, 2013, at \$77,000.00, foreclosed to the lender on September 30, 2013, for \$59,047.00, and sold on February 10, 2014, for \$62,250.00.

A letter from Chase Bank, dated May 23, 2013, showed an outstanding principle balance on the property in the amount of \$64,827.24 plus \$1,299.41 was required to bring the account current.

The property received one offer on the property. It seems that the FHA appraisal valued the home at \$70,000.00, which was less than the \$73,000.00 the buyer offered to purchase the property.

Hall had to consider a cost benefit analysis given the financial health of the estate, principle balance on the property, and closing costs involved in any real estate transaction. The only offer to purchase the property appeared to be rejected by the purchaser's lender because the property did not appraise. Prior to and at the time of foreclosure there were no family members identified and none were until about December 16, 2013, at which time Kershaw notified Hall's office that she was the decedent's sibling. Hall appeared to have exercised her authority and discretion as personal representative and made decisions in accordance with what she deemed to be in the best interest of the estate. The Division did not find evidence that Hall improperly handled the estate in a way that resulted in the property being foreclosed. Therefore, Allegation 4 is not substantiated.

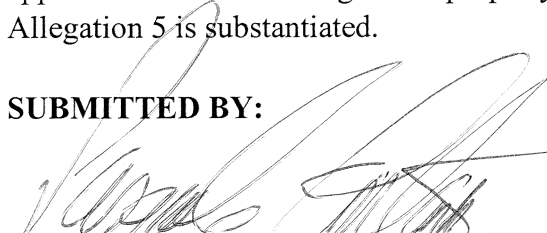
Allegation 5: Complainant alleges the fiduciary sold expensive estate bedroom furniture to themselves, friends or relatives at very low prices.

Kershaw alleged Hall's office sold expensive bedroom furniture and did so to enriched themselves, friends or relatives.

Auction receipts reviewed verified that the queen bed and frame was sold at the county's online public surplus auction and the winning bid of \$15.00 came from Stalling's son. The surplus public auction is a running auction accessible to public. Hall and Stallings stated that they have a rule prohibiting them from bidding on auction items on estates they manage but said they have no control over any other member of the public that wishes to bid on any given item and the fiduciary's office is notified only of the final sale.


While it is true that any member of the public may purchase items at an auction, as discussed in Allegation 1, the fiduciary must use reasonable care to determine that the manner of disposition is appropriate. Assuming that an appropriate level of care is exercised, individuals related to the fiduciaries purchasing property at an auction would not be of concern. In situations where the fiduciaries have relinquished responsibility for determining the appropriateness of the disposition process the fiduciaries create at least the appearance of self-dealing when property is acquired by a family member. Therefore, Allegation 5 is substantiated.

SUBMITTED BY:


PASQUALE FONTANA, Investigator
Certification and Licensing Division

3/25/16
Date

REVIEWED BY:


Certification and Licensing Division

4/4/16
Date

DECISION OF THE PROBABLE CAUSE EVALUATOR:

Having conducted an independent review of the facts and evidence gathered during the course of the investigation of complaint number **15-0009**, the Probable Cause Evaluator:

☐ requests division staff to investigate further.

☒ determines probable cause does not exist the certificate holder has committed the alleged acts of misconduct as to Allegation(s):

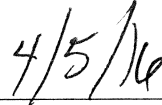
2, 3, 4

☒ determines probable cause exists the certificate holder committed the alleged acts of misconduct as to Allegation(s):

#195,



Mike Baumstark
Probable Cause Evaluator



Date

**ARIZONA SUPREME COURT
ADMINISTRATIVE OFFICE OF THE COURTS
ORDER OF THE BOARD**

<i>CERTIFICATE HOLDER/LICENSEE INFORMATION</i>	Certificate Holder:	Patricia Hall
	Certification Number:	20665
	Business Name:	Apache County Public Fiduciary
	Certificate Number:	20115

Recommendation:

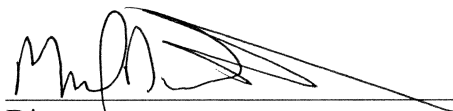
It is recommended the Board accept the finding of the Probable Cause Evaluator and enter a finding Patricia Hall and Apache County Public Fiduciary have not committed the alleged act(s) of misconduct as detailed in Allegations 2, 3 and 4 of the Investigation Summary and Allegation Analysis Report in complaint number 15-0009.

It is recommended the Board accept the finding of the Probable Cause Evaluator and enter a finding Patricia Hall and Apache County Public Fiduciary have committed the alleged act(s) of misconduct as detailed in Allegations 1 and 5 of the Investigation Summary and Allegation Analysis Report in complaint number 15-0009.

It is recommended the Board enter a finding grounds for formal disciplinary action exists pursuant to Arizona Code of Judicial Administration ("ACJA") § 7-201(H)(6)(a) for act(s) of misconduct involving ACJA § 7-202(J)(6)(a) and (h) by failing to provide a valuation of the property listed on the inventory and failure to take pictures of all property; ACJA § 7-202(J)(6)(b) and (d) for failure to exercise control or assure appropriateness of the auction process; and for self-dealing or the appearance of self-dealing by selling estate property to a family member without exercising control over the auction/disposition process to assure appropriateness of the process.

It is further recommended the Board issue a Censure Patricia Hall and Apache County Public Fiduciary.

SUBMITTED BY:



Director
Certification and Licensing Division

5/3/16

Date

FINAL DECISION AND ORDER:

The Board having reviewed the above Investigation Summary, Allegation Analysis Report, finding of the Probable Cause Evaluator, and Recommendation regarding complaint number 15-0009 and Patricia Hall and Apache County Public Fiduciary certificate number

20665 and 20115 respectively, makes a finding of facts and this decision, based on the facts, evidence, and analysis as presented and enters the following order:


- ☐ requests division staff to investigate further.
- ☐ refers the complaint to another entity with jurisdiction.

Referral to: _____

- ☐ dismisses the complaint, and:
 - ☐ requests division staff prepare a notice of dismissal pursuant to ACJA § 7-201(H)(5)(c)(1).
 - ☐ requests division staff prepare a notice of dismissal and an Advisory Letter pursuant to ACJA § 7-201(H)(5)(c)(2).
- ☐ determines grounds for discipline exist demonstrating the certificate holder committed the alleged act(s) of misconduct and:
 - ☐ enter a finding the alleged act(s) of misconduct or violation(s) be resolved through informal discipline, pursuant to ACJA § 7-201(H)(7) and issue a Letter of Concern.
 - ☐ enter a finding the alleged act(s) of misconduct or violation(s) be resolved through formal disciplinary proceeding, pursuant to ACJA § 7-201(H)(9).
- ☐ requests the certificate holder appear before the Board to participate in a Formal Interview, pursuant to ACJA § 7-201(H)(8).
- ☐ orders the filing of Notice of Formal Charges, pursuant to ACJA § 7-201(H)(10).
- ☐ enters a finding the public health, safety or welfare is at risk, requires emergency action, and orders the immediate emergency suspension of the certificate and sets an expedited hearing for:

Date, Time, and Location: _____

- ☒ adopts the recommendations of the Division Director.
- ☐ does not adopt the recommendations of the Division Director and orders:



Deborah Primock, Chair
Fiduciary Board

5/12/16
Date

*Y:\COMPLAINT INVESTIGATIONS\Letter Templates\Investigation Report Templates\Informal Case Summary
Template.docx*

**SUPREME COURT OF ARIZONA
FIDUCIARY BOARD**

**IN THE MATTER OF FIDUCIARY
LICENSE:**

No. FID-NFC-15-0009

APACHE COUNTY PUBLIC FIDUCIARY,
Certificate Number 20115

FINAL ORDER

And

PATRICIA HALL,
Certificate Number 20665

On May 26, 2016, the Fiduciary Board (“Board”) filed a Notice of Formal Statement of Charges and Right to Hearing in the above-captioned matter [Exhibit A] with the Honorable William J. O’Neil (“Judge O’Neil”). Apache County Public Fiduciary and Patricia Hall (“ACPF and Hall”) failed to file an Answer and did not request a hearing. The Board finds ACPF and Hall in default and the Factual Allegations of Misconduct contained in Exhibit A are deemed admitted, pursuant to ACJA § 7-201(H)(11). The Board holds the authority to proceed with this action pursuant to ACJA § 7-201(D)(5)(c).

JURISDICTION

Pursuant to Arizona Codes of Judicial Administration (“ACJA”) § 7-201 and § 7-202 adopted by Arizona Supreme Court, the Board served Notice of Formal Statement of Charges and Right to Hearing to ACPF and Hall on May 31, 2016. The Board has jurisdiction over this matter as ACPF was granted licensure on March 18, 1999 and Hall was granted licensure on March 10, 2011. Pursuant to ACJA § 7-201(H) and ACJA § 7-202(H), the matter was investigated and ACPF and Hall were provided an opportunity to respond to the complaint,

1 participate in the investigation of the complaint, file an Answer to the Notice of Formal Statement
2 of Charges, and request a hearing.

3 **PROCEDURAL HISTORY**

4 1. On May 15, 2015, the Certification and Licensing Division (“Division”) received a
5 complaint involving ACPF and Hall.

6 2. On May 18, 2015, the Division sent ACPF and Hall a copy of the complaint and notice
7 of the ACJA § 7-201(H)(3)(c) requirement that ACPF and Hall submit a written response to the
8 complaint within thirty (30) days. Division records reflect ACPF and Hall received the mailing
9 on May 26, 2015 and submitted a timely written response to complaint number 15-0009.

10 3. On April 5, 2016, pursuant to ACJA § 7-201(H)(5)(a)(3), Probable Cause Evaluator Mike
11 Baumstark entered a finding probable exists in complaint number 15-0009.

12 4. On May 12, 2016, the Board accepted the finding of the Probable Cause Evaluator and
13 entered a finding grounds for formal disciplinary action existed pursuant to ACJA § 7-
14 201(H)(6)(a). The particular sections of laws, court rules, ACJA, and orders relevant to
15 complaint number 15-0009 are ACJA §§ 7-201(F)(1), 7-202(F)(1), 7-202(J)(1)(a), (c)(2),
16 (J)(6)(a), (J)(6)(b), (d) and (h); and Arizona Rules of Probate Procedure: Rule 31(A)(2).

17 5. On May 31, 2016, ACPF and Hall were served with a Notice of Formal Statement of
18 Charges and Right to Hearing in complaint number 15-0009. ACPF and Hall failed to file an
19 Answer and did not request a hearing.

20 **FINDINGS OF FACTS**

21 ACPF and Hall having failed to file an Answer, the Board finds ACPF and Hall in default
22 and the Factual Allegations of Misconduct contained in Exhibit A are deemed admitted, pursuant
23 to ACJA § 7-201(H)(11). On May 12, 2016, the Board adopted the Factual Allegations of
24 Misconduct in Exhibit A as the Findings of Fact in the matter.
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CONCLUSIONS OF LAW

The Board adopts the Formal Charges contained in Exhibit A as the Conclusion of Law in this matter.

FINAL DECISION and ORDER

Having adopted the above-referenced findings and conclusions, the Board orders the following disciplinary sanction in complaint number 15-0009 pursuant to ACJA § 7-201(H)(24)(a)(6)(b):

- a) Issue a Censure to Apache County Public Fiduciary and Patricia Hall.

DATED this 8 day of Sept., 2016.



Deborah Primock, Chair
Fiduciary Board

1 A copy of the foregoing hand delivered and/or mailed this 8th day of Sept. 2016, to:

2 Apache County Public Fiduciary
3 Attention: Patricia Hall
4 P.O. Box 693 - 75 West Cleveland Street
5 St. Johns, Arizona 85936

6 Rex C. Nowlan
7 Agency Counsel Section
8 Office of the Arizona Attorney General
9 15 South 15th Avenue
10 Phoenix, Arizona 85007

11 David Withey, Assistant Counsel
12 Administrative Office of the Court
13 1501 West Washington
14 Phoenix, Arizona 85007

15 Certification and Licensing Division
16 Arizona Supreme Court
17 1501 West Washington, Suite 104
18 Phoenix, Arizona 85007

19 By:

20  for:

21 Michelle Martinez, Manager
22 Certification and Licensing Division

23 Y:\COMPLAINT INVESTIGATIONS\OPEN COMPLAINTS\FID APACHE CO PUBLIC FIDUCIARY 15-0009\FINAL ORDER APACHE CO
24 15-0009.DOCX
25